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16 IN THE UNITED STATES DISTRICT COURT

17 FOR THE NORTHERN DISTRICT OF CALIFORNIA

18 OAKLAND DIVISION

19 PLEXXIKON INC.,

20 Plaintiff,

21 v.

22 NOVARTIS PHARMACEUTICALS
23 CORPORATION,

24 Defendant.

Case No. 4:17-cv-04405-HSG

**STIPULATION RE: DISCOVERY;
PROPOSED ORDER**

Ctrm: 2 – 4th Floor

Judge: Honorable Haywood S. Gilliam, Jr.

1 On August 20, 2018, Plaintiff Plexxikon Inc. (“Plexxikon”) filed a motion for leave to file a third
2 amended complaint, seeking leave to amend its complaint to add claims for patent infringement against
3 GlaxoSmithKline (“GSK”), in order to more easily obtain discovery from GSK. *See* ECF No. 90.

4 On August 22, 2018, Plexxikon filed a motion in the United States District Court for the Eastern
5 District of Pennsylvania to compel compliance with the two subpoenas it had previously served on GSK,
6 and in the alternative asking the court to transfer the motion to compel to the United States District for
7 the Northern District of California. *See Plexxikon Inc. v. Novartis Pharmaceuticals Corp.*, 2:18-mc-
8 00162-MAK (E.D. Pa. Aug. 22, 2018), ECF No. 6. On August 29, 2018, GSK filed an opposition. *See* *id.*,
9 ECF No. 17. On August 30, 2018, the court transferred the motion to compel to this district. *See id.*,
10 ECF No. 21.

11 Plexxikon and GSK now wish to enter into a stipulation resolving their currently-outstanding
12 discovery disputes and the pending motion to compel and motion for leave to amend. Plexxikon and
13 GSK therefore stipulate as follows:

14 First, GSK will re-produce its current document production without any redactions made on the
15 basis of relevance. Plexxikon and GSK agree that GSK may maintain its redactions for privilege. GSK
16 may designate these documents “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant
17 to the stipulated protective order (ECF No. 63), with Section 7.3 modified to read as follows:

18 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
19 ONLY” Information or Items. Unless otherwise ordered by the court or
20 permitted in writing by the Designating Party, a Receiving Party may disclose
any information or item designated “HIGHLY CONFIDENTIAL –
ATTORNEYS’ EYES ONLY” only to:

21 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
employees of said Outside Counsel of Record to whom it is reasonably
necessary to disclose the information for this litigation and who have signed
the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
Exhibit A;

24 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably
necessary for this litigation, (2) who have signed the “Acknowledgment and
Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set
forth in paragraph 7.4(a)(2), below, have been followed;

27 (c) the court and its personnel;

1 (d) court reporters and their staff, professional jury or trial consultants, and
2 Professional Vendors to whom disclosure is reasonably necessary for this
3 litigation and who have signed the “Acknowledgment and Agreement to Be
4 Bound” (Exhibit A); and

5 (e) the author or recipient of a document containing the information or a
6 custodian or other person who otherwise possessed or knew the information.

7 Under this designation, in house counsel for Plexxikon will not have access to GSK’s document
8 production bearing the “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” designation.

9 *Second*, to the extent they exist, GSK will produce metadata for its prior document productions,
10 as well as for any document productions it makes in the future. That metadata will include the
11 production fields attached as **Exhibit A**.

12 *Third*, GSK will produce one or more witnesses, subject to its objections, in response to a
13 deposition subpoena under Rule 30(b)(6) of the Federal Rules of Civil Procedure that Plexxikon
14 anticipates serving in the future. Plexxikon agrees that it will serve a single deposition subpoena on
15 GSK.

16 *Fourth*, GSK agrees that in any future subpoenas Plexxikon serves, it may list a place of
17 compliance in the Northern District of California, and consents to have any future motions to compel by
18 Plexxikon be brought in the United States District Court for the Northern District of California.
19 However, Plexxikon and GSK agree that any depositions of GSK witnesses will be at a place designated
20 by GSK.

21 *Fifth*, Plexxikon withdraws its motion for leave to file a third amended complaint (ECF No. 90)
22 and its pending motion to compel (*Plexxikon Inc. v. Novartis Pharmaceuticals Corp.*, 2:18-mc-00162-
23 MAK (E.D. Pa. Aug. 22, 2018), ECF No. 6).

24 *Sixth*, Plexxikon will not file another motion to amend its complaint in this case to add claims for
25 patent infringement against GSK based on information that Plexxikon is currently aware of, nor will
26 Plexxikon file a new case against GSK alleging patent infringement based on the information contained
27 in Plexxikon’s motion to amend its complaint or its proposed amended complaint. Plexxikon reserves
28 the right to file a new case against GSK, and reserves the right to bring any other claims in that case.

1 Dated: October 2, 2018

DURIE TANGRI LLP

2 By: /s/ Raghav R. Krishnapriyan
3 RAGHAV R. KRISHNAPRIYAN

4 Attorneys for Plaintiff
5 PLEXXIKON INC.

6 Dated: October 2, 2018

KNOBBE, MARTENS, OLSON & BEAR, LLP

7 By: /s/ William R. Zimmerman
8 WILLIAM R. ZIMMERMAN

9 Attorneys for Third Party GLAXOSMITHKLINE

10 **FILER'S ATTESTATION**

11 Pursuant to Civil L.R. 5-1(i)(3), regarding signatures, I, Raghav R. Krishnapriyan, attest that
12 concurrence in the filing of this document has been obtained.

13 Dated: October 2, 2018

14 /s/ Raghav R. Krishnapriyan
RAGHAV R. KRISHNAPRIYAN

15 **PROPOSED ORDER**

16 PURSUANT TO STIPULATION, IT IS SO ORDERED.

17 Dated: 10/4/2018

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21 HAYWOOD S. GILLIAM, JR.
22 United States District Judge
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